

**PROCUREMENT REGULATIONS, POLICIES AND PROCEDURES
OF THE
TENNESSEE EDUCATION LOTTERY CORPORATION**

TABLE OF CONTENTS

1.01	Definitions.
1.02	Authority and Applicability.
1.03	General Policies.
1.04	Major Procurements -- <i>General Provisions.</i>
1.05	Major Procurements -- <i>Procurement Methods, Etc.</i>
1.06	Protest.

1.01 Definitions. The following definitions shall apply to all Procurement Regulations of the Corporation set forth in any Part hereof (or portion thereof) unless expressly provided otherwise. In addition to the terms defined below or elsewhere herein, the Corporation hereby incorporates by reference the various definitions established and set forth in T.C.A. § 4-51-102 or elsewhere in the Act.

- (a) “Act” means the Tennessee Lottery Implementation Act, Tennessee Code Annotated, Title 4, Chapter 51.
- (b) “Board” means the Board of Directors of the Tennessee Education Lottery Corporation.
- (c) “Corporation” and “TELC” means the Tennessee Education Lottery Corporation.
- (d) “Major procurement” means the act or process of securing a major procurement contract or the obtaining of the products or services that are subject of a major procurement contract.
- (e) “Major procurement contract” means any contract for gaming products or services in excess of seventy-five thousand dollars (\$75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Tennessee lottery, but not including materials, supplies, equipment and services common to the ordinary operations of a corporation.
- (f) “Procurement Regulations” means these procurement regulations, policies and procedures, as amended from time to time, set forth in these Parts 1.01 through 1.06.
- (g) “Proposal,” “bid,” “quote,” and “offer” shall all denote that which a vendor provides for competitive consideration or comparison under any competitive procurement process.
- (h) “Responsible Bidder/Proposer” means a vendor who submits a bid, offer, quote or proposal in response to a solicitation and who, in the reasonable opinion of the Corporation, (i) is able and is otherwise qualified in all respects to perform fully the contract requirements without delay and (ii) has the integrity and reliability which will assure good faith performance.

- (i) “Responsive Bidder/Proposer” means a vendor who has submitted a bid, offer, quote or proposal that conforms in all material respects to the Corporation’s solicitation.
- (j) “Scope of Products and Services” means a description of the products and/or services which will be the subject of the applicable contract.
- (k) “Single Vendor having exclusive rights to offer a particular service or product” shall mean any vendor possessing (i) exclusive and/or predominant capabilities to provide services or products needed by the Corporation, which in the judgment of the Corporation, are not obtainable from other providers and/or (ii) predominant capabilities to offer services or products which, in the judgment of the Corporation, contain features and specific characteristics that provide superior utility not obtainable from similar products.
- (l) “Solicitation” means all documents, whether attached or incorporated by reference, utilized for soliciting bids, offers, quotes or proposals with respect to a particular procurement.
- (m) “Specification” means a description of the required physical, functional or performance characteristics, or of the nature of, a product or service. A specification includes, as appropriate, requirements for inspecting, testing or preparing a product or service.

1.02 Authority and Applicability. The Board does hereby make the following findings and conclusions with respect to the Procurement Regulations herein set forth:

- (a) The Corporation was created pursuant to the Act to initiate, supervise and administer the operation of a state lottery, the net lottery proceeds of which are to be used for the educational programs and purposes specified in the Act.
- (b) The Act authorizes and directs the Corporation to adopt regulations, policies and procedures as necessary to carry out and implement its powers and duties. By way of illustration, but not in limitation of the foregoing, the Act expressly authorizes and directs the Corporation to adopt regulations, policies and procedures (i) to regulate the conduct of lottery games in general, (ii) with respect to the competitive bidding of major procurement contracts, and (iii) with respect to any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public.
- (c) The Act expresses the General Assembly’s intent that the Corporation shall encourage participation by minority-owned businesses and directs the Corporation to adopt a plan which achieves, to the greatest extent possible, a level of participation by minority-owned businesses taking into account the total number of all retailers and vendors, including subcontractors. The Corporation will strive to maximize participation of minority-owned businesses to achieve a minimum participation goal of fifteen percent (15%) through both prime and second tier business contracting opportunities.
- (d) The Board has found, and hereby restates its finding, that the Corporation’s Procurement Regulations are necessary and appropriate to enable the Corporation to fulfill its statutory obligations, including without limitation its obligations (i) to act for the benefit of the people of the State of Tennessee through the operation of a state

lottery, and (ii) to strive to maximize net lottery proceeds in order to achieve its ultimate statutory purpose of funding educational programs and purposes.

- (e) The Board has also found, and hereby restates its finding, that the Corporation's Procurement Regulations are designed to enable the Corporation to initiate, supervise and administer the lottery in a manner that will provide the greatest long-term benefit to the State of Tennessee, the greatest integrity for the Corporation and the best services and products for the public.
- (f) These Procurement Regulations are not intended to address all requirements regarding the procurement or content of major procurement contracts (or any other contracts). In particular, the specific requirements of the Act regarding the procurement and content of contracts or matters not addressed herein that are expressly set forth in the Act but not addressed herein are not affected in any way by these Procurement Regulations. By way of illustration, but not in limitation of the foregoing, these Procurement Regulations do not address the following: (i) the Corporation's obligation to investigate the financial responsibility, security and integrity of any lottery system vendor who is a finalist in submitting a bid, offer, quote or proposal as part of a major procurement or the information which must be submitted by any potential lottery system vendor in connection with a bid, offer, quote or proposal; (ii) the selection of lottery retailers or the terms and provisions of contracts with lottery retailers; and (iii) the provisions of the Act governing certain conflicts of interest, financial interests of employees and directors of the Corporation in vendors, contributions by vendors to political campaigns, and other similar matters.
- (g) The Act authorizes the formation of a lottery procurement panel consisting of the Secretary of State, the State Treasurer and the Commissioner of Finance and Administration to be chaired by the Commissioner of Finance and Administration. These Procurement Regulations do not address the requirements of the Act regarding the Corporation's obligation to submit certain solicitation documents to the lottery procurement panel prior to the commencement of the procurement process. The provisions of the Act will control such requirements.
- (h) These Procurement Regulations shall be construed consistently with the provisions of the Act. Although these Procurement Regulations are intended to clarify and embellish the Act, if any provision of these Procurement Regulations contradicts the express provisions of the Act, the provisions of the Act shall control. If any provision of these Procurement Regulations or the application thereof is declared by a court of competent jurisdiction to be illegal, void or unenforceable, (i) the remainder of these Procurement Regulations will continue in full force and effect, and (ii) the application of such illegal, void or unenforceable provision will be interpreted so as to replace such with a legal, valid and enforceable provision that will achieve, to the extent possible, the purposes of such illegal, void or unenforceable provision.

1.03 General Policies. The Corporation may purchase, lease, or lease-purchase such products or services as are necessary for the operation of the lottery. In any decision made under these Procurement Regulations, the Corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

- (a) *Approval Required; Execution of Contracts.* The Board must approve each major procurement contract. The chief executive officer or her designee must approve and

sign each Corporation purchase order or contract. Only the chief executive officer or her designee is authorized to bind the Corporation in contractual agreements (a purchase order, notice of contract award, or contract signed by other Corporation personnel is null and void and shall not obligate the Corporation to payment for products and services).

- (b) *Commodity Inspection and Testing.* All materials, equipment, supplies, products and services are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt, however, does not relieve any supplier of liability. When subsequent tests are conducted after receipt and when such tests reveal damage or failure to meet specifications, the Corporation may seek damages regardless of whether a part or all of the merchandise has been consumed.
- (c) *Commodity Substitutions.* A vendor may manufacture or ship an item that materially conforms to or exceeds specifications, but which may be technically different, however, all such substitutions shall require the approval of the Corporation prior to shipment.
- (d) *Contract.* The purpose of a written contract is to embody, in writing, the complete agreement between parties. No terms shall be left to an unwritten understanding. Further:
 - (i) All Corporation contracts shall specifically state: “The Vendor hereby covenants and agrees that no person shall (A) be excluded from participation in, or be denied benefits of, this Agreement, or (B) be excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Vendor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.”
 - (ii) All contracts subject to these Procurement Regulations shall specifically state: “The Vendor shall maintain documentation for all charges against the TELC under this Agreement or any modifications or amendments thereto. The books, documents, papers, accounting records and other evidence pertaining to products and/or services to be provided or performed or money received under this Agreement (A) shall be maintained for a period of five (5) full years from the date of the final payment and (B) shall be subject to audit or inspection at any reasonable time and upon reasonable notice by the TELC or its duly appointed representatives, including without limitation the Comptroller of the Treasury of the State of Tennessee. Vendor shall make such materials available at its offices, and copies thereof shall be furnished to the TELC or its duly appointed representative by the Vendor, at no cost to the TELC or its duly appointed representative, if requested by the TELC or its duly appointed representative. Such records shall be maintained in accordance with any applicable provisions of generally accepted accounting principles (or other applicable accounting principles or policies) and any other applicable procedures established by the TELC from time to time.”
- (e) *Contract Amendment.* A contract amendment is a written document that changes, adds or deletes one or more terms or conditions of an existing contract. During the

course of the performance of a contract, it may become necessary to change, add to or delete from the terms and conditions of the contract.

- (i) A contract amendment shall clearly detail the additions, deletions, and modifications to the subject contract.
 - (ii) The Corporation may enter into a contract amendment with respect to a major procurement contract if the chief executive officer determines any or all of the following: (A) the contract amendment is within the original scope of work and within the intent and purpose of the applicable major procurement contract, (B) the contract amendment is a logical extension to the original scope of work of the applicable major procurement contract, or (C) if entered into as a stand-alone contract, such contract would not constitute a major procurement contract.
- (f) *Contract Termination.* The chief executive officer may, for good cause, suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of the Act or the Corporation's Procurement Regulations. In any such case involving a major procurement contract, the chief executive officer shall notify the Board with written justification for such action within thirty (30) days of such action.
- (g) *Minority Business Participation.* It is the declared policy and intent of the Corporation (i) to encourage participation by minority-owned businesses, and (ii) to strive to maximize participation of minority owned businesses to achieve a minimum participation of fifteen percent (15%) through both prime and second tier business contracting opportunities. In furtherance of such policy and intent, and in order to achieve to the greatest extent possible a level of participation by minority-owned businesses taking into account the total number of all retailers and vendors, including any subcontractors, the Board shall adopt an Equal Business Opportunity Program. Pending the adoption of an Equal Business Opportunity Program, the Corporation will include in its solicitation documents such provisions as the Corporation deems reasonable and appropriate regarding equal business opportunities for minority-owned businesses. Such provisions will include, without limitation, (A) requirements regarding the efforts that potential vendors must undertake to give minority-owned businesses the opportunity to enter into a joint venture with, or serve as a subcontractor for, such potential vendor; and (B) the required non-discrimination provisions that must be included in the contract resulting from such solicitation.
- (h) *Negotiation and Other Communication.* The directors, the chief executive officer and all Corporation employees shall conduct negotiations and other communications with vendors and potential vendors with respect to potential major procurement contracts and other contracts as they deem to be in the best interests of the Corporation; provided, that any communication or negotiation which may take place regarding any procurement or contract shall be conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their bids, offers, quotes or proposals as a result. Specifically, in connection with a major procurement, the Corporation will only be permitted to negotiate with the vendor whose bid, offer, quote or proposal is the highest rated bid, offer, quote or proposal in an RFP procurement (as defined below). In the event that negotiations with the highest rated vendor fail to result in a contract, or if for any other reason a contract with such vendor is not executed, the

Corporation may conduct negotiations with the second highest rated vendor and so forth until a contract is successfully executed.

- (i) *Procurement Record.* The Corporation shall retain a record of the procurement process regarding any major procurement contract, any negotiations upon which a major procurement contract is based, documentation of required approvals, and documentation that each major procurement contract is awarded to a responsible and responsive bidder or proposer.
- (j) *Purchase Order or Contract Required.* Any lottery vendor or other person who manufactures or delivers a product or service without a written purchase order or contract or who delivers a product or service not specifically authorized by a purchase order or contract does so at the lottery vendor's (or other person's) own risk. Under no conditions shall the Corporation be liable for payment of any type for any product or service provided by a lottery vendor or other person, even such provided in good faith, that is not specifically authorized by a purchase order or contract.

1.04 Major Procurements – General Provisions.

- (a) *Applicability.* The provisions of subsections 1.04 and 1.05 are applicable to all major procurements by the Corporation (and only to major procurements); provided, however, that the provisions of subsections 1.04 and 1.05 shall not be applicable:
 - (i) in the case of a single vendor having exclusive rights to offer a particular service or product;
 - (ii) to emergency purchases (an emergency is a circumstance or set of circumstances caused by the occurrence of events beyond the control of the Corporation and which could reasonably be believed to (A) threaten the security, integrity or the financial status of the lottery, (B) threaten the public health, welfare or safety or (C) lead to imminent injury or loss; an emergency purchase shall be made by obtaining pricing information from at least two prospective vendors unless the Corporation determines in writing that the time required to obtain pricing information will increase the immediate consequences of the emergency, in which case, the pricing requirement shall be excepted); or
 - (iii) to the Corporation's purchase of products and services (A) from the State of Tennessee or any agency, instrumentality, quasi-public instrumentality, body political and corporate, or other political subdivision of the State of Tennessee, or (B) pursuant to any contract or purchasing arrangement of any of the foregoing.
- (b) *Major Procurement Contracts to be Competitively Bid.* Except as provided at subsections (a)(i) through (iii) above, all major procurement contracts shall be competitively bid in accordance with the provisions of subsections 1.04 and 1.05.
- (c) *Procedures Regarding Submissions.*
 - (i) The Corporation is committed to a competitive procurement process that maintains the highest level of integrity. Therefore, no communication outside the procurement process initiated by vendors, their attorneys, representatives or others promoting their position, other than normal

business activities not associated with the procurement, will be allowed with any officer, employee or Board member of, or consultant or advisor to, the Corporation. Any attempt to influence any employees, officers, consultants, advisors or Board members of the Corporation with respect to a procurement, whether such attempt is oral or written, formal or informal, is strictly prohibited and will result in disqualification.

- (ii) All bids, offers, quotes or proposals and the contracts resulting from solicitations are subject to the requirements of, and must comply with, the Act, regardless of whether or not specifically addressed in either the solicitations or the proposal. All potential vendors shall read and be familiar with the Act, a copy of which may be obtained through a link on the Corporation's web site.
- (iii) All data, materials, and documentation originated and prepared for the Corporation pursuant to solicitations shall belong exclusively to the Corporation and, subject to these Procurement Regulations and the provisions of T.C.A. §§ 4-51-124 and 126(f), may be available to the public in accordance with Tennessee law. Under no circumstances will the Corporation be liable to any vendor or to any other person or entity, for any disclosure of any trade secret or confidential information.
- (iv) Issuance of any solicitation does not constitute a commitment on the part of the Corporation to award a contract. The Corporation retains the right to reject any or all proposals, in whole or in part, and to cancel any solicitation (before or after receipt of proposals in response thereto) if the Corporation considers it to be in the best interests of the Corporation.
- (v) The Corporation shall not, under any circumstance, be responsible for any expenses incurred by a vendor in preparing and submitting a proposal.
- (vi) All materials submitted to the Corporation by vendors shall upon submission become the property of the Corporation and may be used as the Corporation deems appropriate.
- (vii) From the time a solicitation is issued until either (A) six (6) months after the award of a contract or (B) the rejection of all bids, offer, quotes or proposals received by the Corporation, vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Corporation employee, officer or Board member.
- (viii) Each bid, offer, quote or proposal must be signed by the vendor's authorized agent. If a joint proposal that includes multiple vendors is submitted, it must define completely the responsibilities that each entity is proposing to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The proposal must be signed by an authorized officer or agent of each entity. In addition, the Corporation reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor (or each subcontractor that is expected to provide a specified amount of the procured product or service) to sign the proposal. Such requirement shall be clearly set forth in the solicitation. The proposal must designate a single authorized official from one of the entities to serve as the sole point of contact

between the Corporation and the responding joint venture, strategic partnership or prime contractor team. Any contract resulting from a joint proposal must be signed by an authorized officer or agent of each entity. In addition, the TELC reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor (or each subcontractor that is expected to provide a specified amount of the procured product or service) to sign any such contract. Such requirement, or the possibility of such requirement, shall be clearly set forth in the solicitation.

- (ix) The Corporation reserves the right to make changes to any solicitation by issuance of a written addendum or amendment. The Corporation may issue any such addendum or amendment at any time prior to entering a contract regarding the applicable procurement. Any addendum or amendment will be posted, via link to "Major Procurement Opportunities," on the Corporation's web page, and notice of the same shall be communicated, via facsimile, to all vendors who requested and were sent a copy of the applicable solicitation or who have submitted a bid, offer, quote or proposal in respect of such solicitation.
- (x) A submitted proposal may be modified or withdrawn by written notice received by the Corporation at any time prior to the submission deadline. Each proposer is under a continuing obligation to notify the Corporation following the submission of a proposal of any changes to the information, data or facts submitted in their response, which could reasonably be expected to affect the Corporation's consideration of the proposal. Amendments to the technical or cost portions of the proposal will not be accepted during the evaluation process, although the Corporation reserves the right to request additional information or clarification on the contents of the proposal. After the solicitation deadline, a vendor may withdraw its bid, offer, quote or proposal, or other response or a portion thereof only upon a written determination by the Corporation that there is an obvious error in such response and where the enforcement of the response would impose an unconscionable hardship on the vendor.
- (xi) The Corporation reserves the right to obtain any information from any lawful source as required by the Act and regarding the past business history, practices and abilities of vendors, their officers, directors, employees, owners, team members, partners and/or subcontractors. Such information may be taken into consideration in evaluation of the proposals.

1.05 Major Procurement Contracts Procurement Methods, Etc.

- (a) *Procurement Methods Available to the Corporation.* The Corporation may utilize either of the following methods, both of which are further described herein, to competitively bid major procurement contracts: (i) a request for proposal, and (ii) an invitation to bid. The chief executive officer shall determine, in his or her sole and absolute discretion, the procurement method to be used in the case of any major procurement contract; provided, however, that the Board must approve the procurement method selected for any major procurement regarding online and instant ticket lottery vendors, and any advertising contract estimated to be valued in excess of \$500,000. No vendor shall be permitted to challenge any decision of the chief executive officer or the Board with regard to the determination of the

procurement method authorized hereby to be utilized in connection with any procurement.

- (b) *Request For Proposals.* The provisions of this clause (b) will be applicable solely to solicitations of major procurement contracts by means of a Request for Proposal (RFPs).
 - (i) Issuance of RFP. The Corporation shall prepare and issue an RFP and evaluate proposals in accordance with this subsection 1.05(b). Failure by the Corporation to comply with any technical requirement of this subsection 1.05(b) shall not alone be deemed a defect requiring rejection of all bids, offers, quotes or proposals, such decision remaining in the discretion of the Corporation.
 - (ii) RFP Document. An RFP shall set forth provisions including:
 - (A) a clear description of the scope of products and services (the technical requirements, scope and other essential requirements shall be in sufficient detail to minimize the likelihood of requests by vendors for clarification);
 - (B) complete directions about making proposals;
 - (C) an RFP schedule of events that specifies all deadline requirements (vendors must be given a reasonable time, as determined by the Corporation, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted);
 - (D) RFP requirements and proposal restrictions;
 - (E) a description of the factors that will be used to evaluate the proposals (factors may include but are not limited to vendor qualifications, experience, technical approach, minority business participation and cost); and
 - (F) a declaration of certain contract terms and conditions which shall be required by the Corporation.
 - (iii) RFP Review and Approval. Each RFP must be reviewed and approved by the chief executive officer prior to publication to review against the criteria of sound business principles; adequacy of the scope of products and services description; and adequacy of the RFP's assurance of:
 - (A) fairness to potential vendors;
 - (B) achievement of procurement objectives; and
 - (C) protection of the Corporation's interests.
 - (iv) RFP Publication. The Corporation shall publish each RFP solicitation via link to "Major Procurement Opportunities," on the web page of the Corporation, and, if desired by the Corporation, the Tennessee Department of

Finance and Administration Internet web site established for such solicitations. The Corporation shall further solicit interest in each RFP by sending a formal notice of such or notice that the specific RFP has been released to a documented list of potential vendors. The Corporation shall compile the list of potential vendors from those known to the Corporation's staff. The Corporation shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the Corporation will strive to compile lists of potential bidders which are minority-owned businesses; the Corporation will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The Corporation is not required to send a solicitation notice to more than a total of five (5) vendors; provided however, that the Corporation may send a solicitation notice to fewer than five (5) vendors, if, in the opinion of the chief executive officer, fewer than five (5) vendors are qualified. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the Corporation.

- (v) The Corporation shall require each proposer to submit the cost proposal component of the proposal in a sealed and labeled envelope separate from the technical proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.
 - (A) The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the total evaluation of the proposals will then be based on the criteria established in the applicable RFP.
 - (B) Any proposal which fails to adequately separate the cost proposal components from the technical proposal may be considered non-responsive and rejected by the Corporation.
- (vi) The Corporation shall communicate, clarify, and negotiate in the best interests of the Corporation, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal. Specifically, negotiations will only be permitted with the vendor whose bid, offer, quote or proposal is the highest rated bid, offer, quote or pro. In the event that negotiations with the highest rated vendor fail to result in a contract, or if for any other reason a contract with such vendor is not executed, the Corporation may conduct negotiations with the second highest vendor and so forth until a contract is successfully executed.
- (vii) The Corporation shall have the right, at its sole discretion, to amend an RFP in writing at any time.
- (viii) The Corporation shall have the right, at its sole discretion, to reject any and all proposals.
 - (A) Any proposal that does not meet the requirements of an RFP may be considered to be non-responsive, and the proposal may be rejected.

- (B) Any proposal that restricts the rights of the Corporation or otherwise qualifies the proposal may be considered to be non-responsive, and the proposal may be rejected.
- (ix) The Corporation shall have the right, at its sole discretion, to cancel an RFP in its entirety and, at its sole discretion, to reissue or not reissue an RFP.
- (x) Evaluation and Award. Proposals shall be evaluated in accordance with the solicitation and in such a manner as to reasonably assure that all proposals are impartially considered and Corporation requirements are adequately met.
 - (A) Proposals shall be evaluated by a committee established by the Corporation.
 - (B) Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest. Said statement shall be retained as procurement file documentation.
 - (C) Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.
 - (D) Neither the technical proposal, the cost nor any other single criterion shall be the only criterion for a contract award recommendation. Rather, evaluations shall be conducted and criteria shall be established to select proposals that provide the greatest overall value, the greatest long-term benefit to the State of Tennessee, the greatest integrity for the Corporation and the best services and products for the public. However, specific factors may be set forth in the applicable solicitation as criteria for determining whether a vendor who submits a bid, offer, quote or proposal in response to that solicitation is a Responsible Bidder/Proposer and/or which proposals shall be considered responsive to the RFP.
- (c) *Invitation to Bid.* The provisions of this clause (c) will be applicable solely to solicitations of major procurement contracts by means of an Invitation to Bid (ITB).
 - (i) ITB Publication. The Corporation shall publish each ITB solicitation via link to "Major Procurement Opportunities," on the web page of the Corporation and, if desired by the Corporation, the Tennessee Department of General Services' Internet web site established for such solicitations. The Corporation shall further solicit interest in each ITB by sending a formal notice of such or notice that the specific ITB has been released to a documented list of qualified vendors. The Corporation shall compile the list of vendors from those known to the Corporation's staff. The Corporation shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the Corporation will strive to compile lists of potential bidders which are minority-owned businesses, and the Corporation will actively solicit bids from such

businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The Corporation is not required to send a solicitation notice to more than a total of five (5) vendors; provided however, that the Corporation may send a solicitation notice to fewer than five (5) vendors. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the Corporation.

- (ii) Multi-Step Sealed Bidding. The Corporation may use multi-step sealed bidding process when it is not practical or possible to prepare initially definitive specifications that permit an award based only on price. A multi-step ITB is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by the Corporation, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
 - (A) In the ITB, the Corporation shall provide the bidder with information describing the purpose of the procurement, functional and technical requirements, bidder qualifications and any other information considered relevant to the goods or services being procured.
 - (B) The bidder shall submit a technical offer sufficient in detail so as to clearly demonstrate that the bidder would meet the technical specifications of the procurement.
 - (C) All technical offers must be received by the Corporation at the designated time and date specified in the ITB.
 - (D) The technical offers shall be evaluated and deemed acceptable or unacceptable by a technical evaluation team of Corporation staff.
 - (E) At the same time each vendor submits a technical offer, vendors will also be required to submit a bid price clearly defining the cost of their technical offer in accordance with the solicitation. The price bids shall not be opened until after evaluation of the technical bids.
 - (F) Each contract shall be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the solicitation.
- (iii) Tie Bids, Offers, Quotes, Proposals, Etc. A tie bid, offer, quote or proposal exists when two or more vendors offer products and/or services that meet all qualitative criteria, product specifications, terms and conditions at identical prices, including cash discount offered for prompt payment and such other requirements established in the procurement document. In such case, the tie will be broken by the following methods, in descending order:

- (A) award item(s) to vendor that is a minority-owned business;
 - (B) award item(s) to vendor that wins a coin toss.
- (iv) **Compliance With This Subsection.** Failure by the Corporation to comply with any technical requirement of this subsection 1.05(c) shall not alone be deemed a defect requiring rejection of all bids, offers, quotes or proposals, such decision remaining in the discretion of the Corporation.
- (d) **Solicitations.** The provisions of this clause (d) will be applicable to all solicitations of major procurement contracts, regardless of the procurement method being used by the Corporation.
 - (i) All solicitations shall detail:
 - (A) terms and conditions clearly detailing the requirements for the response to the solicitation (including the schedule for submitting and evaluating responses to solicitations) as well as contract language in the event of award;
 - (B) where more than one item is specified, whether the Corporation will have the right to accept proposals either on the basis of each individual item, a group of items or total of all items; and
 - (C) any requirement for a performance bond.
 - (ii) Unless the solicitation specifically permits offers of used or reconditioned items, all solicitations shall be deemed to require that all material, supplies and equipment offered and furnished must be new and not reconditioned.
- (e) **Contractual Award and Agreement.**
 - (i) Each contract shall be awarded by the Corporation by prompt written notice to the responsible and responsive vendor pursuant to a solicitation whose bid, offer, quote or proposal represents the best value to the Corporation and offers what the Corporation believes will result in the greatest long-term benefit to the State of Tennessee, the greatest integrity for the Corporation and the best services and products for the public.
 - (ii) The delivery of a Corporation purchase order or a notice of contract award (for term contracts which require vendor signature) with the valid signature of the chief executive officer constitutes acceptance of the offer to sell and consummates the binding contractual agreement.
- (f) **Inspection of Purchasing Records.** Upon the Corporation's issuance of a notice of intent to award a contract, the Corporation's procurement files for such procurement will be open for public inspection. Notwithstanding the foregoing, (i) the Corporation shall not be required to make available for public inspection information protected by (or otherwise not required to be disclosed pursuant to) applicable law, these Procurement Regulations, or information that the Board determines in accordance with T.C.A. § 4-51-124 shall not be disclosed to the public; and (ii) the Corporation may delay making its procurement files available to the public for such reasonable period of time as the Corporation determines is necessary for it to redact or otherwise

secure that portion of its procurement files that will not be made available to the public. The Corporation's procurement records that are made available to the public shall be available for inspection during the Corporation's regular office hours.

1.06 Protest. The *TENNESSEE EDUCATION LOTTERY CORPORATION -- DISPUTE RESOLUTION PROCEDURES*, a copy of which are attached as Exhibit A to these Procurement Regulations, Policies and Procedures, as the same may be amended from time to time, shall apply to and shall constitute the exclusive procedure for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests (as defined therein) of any kind relating in any way to any agreement entered into by the Corporation (except a Lottery Retailer Agreement, as defined therein), whether in an administrative proceeding or litigation, at law or equity, including, but not limited to, those arising out of or relating to any aspect of a solicitation or bid or a failure to conduct a solicitation or bid, the performance of any party, the interpretation of any contractual provision, the applicability or interpretation of any law, rule or regulation, or any decision to award, deny, suspend or cancel, terminate or not renew any contract or agreement.
